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In re Application of

APR 24 2009

Tan, et al.

OFFICE OF PETITIONS

Application No. 10/532,163

: DECISION ON PETITION

Filed: October 4, 2005

Attorney Docket No. 2085-04100

This is a decision on the renewed "Petition to Withdraw the Holding of Abandonment under 37 CFR 1.181(a), or in the Alternative Petition to Revive Abandoned Application Due to Unavoidable Delay under 37 CFR 1.137(a)", filed March 31, 2009.

The petition under 37 CFR 1.181(a) is **granted**.

The petition under 37 CFR 1.137(a) is **dismissed as moot**.

This application was held abandoned June 5, 2008, after no reply was received to the final Office action mailed March 4, 2008. The notice set forth a shortened statutory period of reply of three months from its mailing date. No response was received within the allowable period and the application became abandoned on June 5, 2008. A Notice of Abandonment was mailed September 25, 2008. Petition under 37 CFR 1.181 and 1.137(a) were filed on March 6, 2009, and dismissed by a decision mailed March 24, 2009.

TREATMENT UNDER 37 CFR 1.181(a)

When, as in this case petitioner is arguing that an Office communication was not received, petitioner must establish non-receipt of the Office communication in accordance with section 711.03(c) of the *Manual of Patent Examining Procedure* that requires the following:

To minimize costs and burdens to practitioners and the Office, the Office has modified the showing required to establish nonreceipt of an Office action. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response.

Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.

Petitioner has met the burden of proof as established by Section 711.03(c)(II) of the MPEP. The holding of abandonment is, therefore, withdrawn.

TREATMENT UNDER 37 CFR 1.137(a)

The petition under 37 CFR 1.137(a) is being dismissed as moot because the application is being returned to a pending status pursuant to the granting of the petition to withdraw the holding of abandonment.

It is noted that petitioner is requesting that the fee for the petition under 37 CFR 1.137(a) be refunded if the petition under 37 CFR 1.181 is granted. Petitioner is again advised that a requirement for consideration of a petition under 37 CFR 1.137(a) is that the petition fee be paid. Once a decision is rendered on the petition the fee is not refundable. On March 6, 2009, petitioner filed a petition under 37 CFR 1.137(a) and a decision on the petition under 37 CFR 1.137(a) was mailed March 24, 2009. Petitioner would not have received a decision on merits of the petition if the petition fee had not been present. As petitioner was given a decision on the merits of the petition under 37 CFR 1.137(a), it would not be appropriate to refund the petition fee for that petition, notwithstanding that the application is being returned to a pending status pursuant to 37 CFR 1.181.

The application file is being directed to Technology Center GAU 2129 for further processing including consideration of the Request for Continued Examination filed March 6, 2009.

Telephone inquiries concerning this decision should be directed to the undersigned (571) 272-3222.



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Office of Petitions